

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)	
)	
Schools and Libraries)	WC Docket No. 02-6
Universal Service Support Mechanism)	
)	
Request for Waiver)	Application No. 134099
of the Commission's Rules)	
by Apache County School Consortium)	

**REQUEST FOR WAIVER OF E-RATE
SERVICE IMPLEMENTATION DEADLINE
FOR FUNDING YEAR 2017**

Pursuant to section 54.719(c) of the Commission's rules, the Apache County School Consortium¹ (Apache County or the Consortium) hereby respectfully requests a waiver of section 54.507 of the Commission's rules for the above-referenced application.² For the reasons set forth below, and consistent with Commission precedent, Apache County respectfully requests that the Wireline Competition Bureau (Bureau) grant this waiver request, and any other waivers necessary, to allow Apache County until June 30, 2020, to complete installation and to receive its committed E-rate funding.

Apache County also respectfully requests that the Bureau expedite its review of this waiver request so that the project may continue without interruption. In addition, the state of Arizona has indicated that the state match that has been awarded to Apache may not continue to be available if an extension is not granted in a timely manner.

¹ Billed Entity Number 143139; Funding Request Number 1799079327.

² 47 C.F.R. § 54.507.

I. BACKGROUND

The Apache County School Consortium assesses the broadband and telecommunications needs of and obtains E-rate funding for six of the school districts located in Apache County, Arizona, and recently, in funding year 2018, added one additional school district and all of the libraries in the county. The E-rate discount rate is 85% to 90% throughout the county. Apache County is in the far Northeast part of Arizona, some of the most remote and poverty-stricken portions of the state. Apache County is classified as a Persistent Poverty County, one of only two such counties in the state of Arizona. Much of the county is on Navajo Indian Nation land and forest service land.

In 2017, Apache County applied for and obtained E-rate funding for a 200-mile fiber build in the northeast corner of Arizona. The funding year 2017 deadline for completion of special construction of leased lit or dark fiber was June 30, 2018.³ However, the project got a late start because Apache County did not receive its E-rate funding commitment until November 2017—leaving only seven months to complete the entire project.⁴ In addition, the planned fiber build covered federal, state, and Tribal land, thus requiring a lengthy permit application process for each of these entities.⁵ Apache County also had to deal with long delays getting permission to work around ancestral architectural sites and nesting areas for spotted owls and other endangered animals. Finally, Arizona experienced serious forest fires in 2017 and 2018; these fires and the associated smoke significantly hindered the efforts of Apache County's service provider, NTUA Wireless, LLC (NTUAW), to access build sites.⁶ For these reasons, Apache County was unable to

³ See 47 C.F.R. § 54.507(d)(1); *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15552, 15558 ¶¶ 37, 49 (2014) (*Second Modernization Order*).

⁴ Exhibit 1, FCC Form 500 (filed Feb. 1, 2018).

⁵ *Id.*

⁶ *Id.*

complete its fiber build by the end of the funding year, so it timely submitted an FCC Form 500 to request an extension of the installation deadline, and received a one-year extension from USAC, until June 30, 2019.⁷

Thanks to this extension, NTUAW will have completed nearly the entire build by June 30, 2019, in spite of harsh winter weather conditions. However, earlier this year, NTUAW discovered a problem that had not previously been identified: the third-party owner of some of the electrical poles that NTUAW planned to use had acquired another electric company, and the latter company did not have completed rights-of-way for its poles.⁸ As a result, the Bureau of Indian Affairs halted additional work on those poles until the outstanding rights-of-way issues are resolved. This process is complicated by the need to notify and obtain approval from individual members of the Navajo Nation. This process will take months; it is made more difficult by the lack of street addresses (which necessitates in-person visits rather than certified mail) and the lack of records (in some cases NTUAW has to work with families to track down other family members that may have rights to the land). NTUAW expects the additional rights-of-way approvals to be completed by the end of 2019.

An additional complication is that environmental permits issued for multiple parts of the uncompleted route prohibit construction between April and August, in order to ensure that construction does not interfere with nesting birds. As a result, at this point NTUAW will not be able to resume construction of the uncompleted route until August 2019, unless biological surveys are conducted to confirm that there is no nesting. These surveys are underway, but the process has affected the tight timeline established to complete the project on time.

⁷ Exhibit 2, FCC Form 500 Approval (extending installation deadline to June 30, 2019).

⁸ Attached is an affidavit attesting to the facts underlying the instant extension request.

Finally, the lengthy shutdown of the federal government this past winter delayed the project, which requires ongoing permitting and coordination with the Bureau of Indian Affairs, the National Forest Service, and the United States Fish and Wildlife Service. The shutdown hindered NTUAW's ability to identify and access Tribal allotments, secure necessary rights of way, secure permissions for road and railroad crossings, and secure tree-cutting and other access permits on Tribal lands.

In spite of all these setbacks, Apache County and NTUAW anticipate that approximately 77 percent of the total project will be completed by the deadline of June 30, 2019. The remaining 23 percent, however, cannot possibly be completed by that time.

II. A WAIVER OF THE SERVICE INSTALLATION DEADLINE IS IN THE PUBLIC INTEREST

Apache County respectfully requests a waiver of the Commission's rules in order to complete its fiber project. The circumstances of Apache County's request for waiver are comparable to the circumstances of other waiver requests that the Bureau has granted. First, Apache County's project has been "unavoidably delayed due to weather or other reasons" outside of its service provider's control.⁹ Second, Apache County satisfies one of the criteria established by the Commission for extensions of the deadline for non-recurring services. Finally, granting this waiver will serve the public interest and will help to achieve the goals of the E-rate program by bringing broadband to students in an unserved rural area.

Any of the Commission's rules may be waived if good cause is shown.¹⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹¹ In addition, the Commission may take into account

⁹ *Second Modernization Order*, 29 FCC Rcd at 15558 ¶ 49.

¹⁰ 47 C.F.R. § 1.3.

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹²

As described above, Apache County and its service provider had no way of anticipating the delays caused by the unexpected discovery of rights-of-way issues on Tribal lands and the federal government shutdown. These delays were outside of Apache County's and NTUAW's control, and either the rights-of-way problem or the shutdown would likely have prevented timely completion of the fiber build on its own (as would the nesting birds issue described above). In October 2018, the Bureau granted a waiver of the service implementation deadline to Jemez Pueblo Tribal Consortium under similar circumstances. There, as here, the service provider was well on its way to completing the fiber build when it encountered a regulatory roadblock that was outside of its control and which it had no reason to anticipate.¹³ The Bureau granted Jemez's waiver request because the New Mexico Department of Transportation had unexpectedly ordered the Jemez Pueblo Tribal Consortium and its service provider to halt construction until completion of an archaeological survey, in much the same way that the Bureau of Indian Affairs ordered Apache County and NTUAW to cease construction until the unexpected rights-of-way issues could be resolved.¹⁴ Also outside of Apache County's and its service provider's control is the shortened construction season mandated by environmental permits for the uncompleted route; as we have noted, even setting aside the rights-of-way problems, NTUAW will not be able to resume construction until August due to the possibility of nesting birds along the construction route. The Bureau has previously cited a shortened construction season as a "significant" factor in

¹² *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹³ *Requests for Waiver by Grants/Cibola County School District and Jemez Pueblo Tribal Consortium*, CC Docket No. 02-6, Order, 33 FCC Rcd 10048, 10050 ¶ 5 (Wireline Comp. Bur. 2018).

¹⁴ *Id.*

approving a special construction extension request.¹⁵ The Bureau has granted as much as two additional years (beyond USAC's one-year extension) to complete a fiber special construction project, given the unique challenges involved in the construction.¹⁶ Here, Apache County requests only 12 additional months to complete its fiber build.¹⁷

Furthermore, the grant of a waiver here would be consistent with the Commission's service extension rule for non-recurring services.¹⁸ The rule allows an extension to be granted if the applicant satisfies one of four criteria.¹⁹ One of the criteria is that the applicant's service provider is unable to complete implementation for reasons beyond the service provider's control. As we have explained, this waiver is necessitated by unexpected last-minute problems with rights-of-way on Tribal lands, by environmental restrictions that significantly shorten the construction season, and by the recent federal government shutdown and the associated delays in obtaining various required permissions. None of these factors was within the service provider's control.

Finally, strict application of the rule in this instance would not be in the public interest. Apache County's service provider has completed almost 80 percent of a massive fiber buildout and is doing everything it can to obtain the necessary permissions to complete the job. Granting Apache County an additional 12 months to complete its fiber build will help extend broadband services to underserved schools. Apache County respectfully argues that a waiver of the Commission rules is in therefore in the public interest.

¹⁵ *Request for Waiver by Utah Education and Telehealth Network, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 4607, 4611 ¶ 11 (Wireline Comp. Bur. 2018).

¹⁶ *Id.*

¹⁷

¹⁸ 47 C.F.R. § 54.507(4).

¹⁹ *Id.*

III. CONCLUSION

For the foregoing reasons, Apache County respectfully asks that the Bureau grant its request for waiver. Apache County also asks that the Bureau waive any other rules, such as the invoicing deadline rules, necessary to allow Apache County an additional 12 months—until June 30, 2020, to complete its fiber installation and utilize its funding commitment.

Apache County also respectfully requests that the Bureau give this extension request expedited treatment so that the project may continue without interruption.

Respectfully submitted,

/s/ Fred Brakeman

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661-716-1840

Consultant for Apache County School Consortium

May 6, 2019

CERTIFICATE OF SERVICE

This is to certify that on this 6th day of May, 2019, a true and correct copy of the foregoing Request for Review was sent via email to the Schools and Libraries Division, Universal Service Administrative Company at the Appeals@USAC.org address.

A handwritten signature in cursive script that reads "Fred Brakeman". The signature is written in dark ink and is positioned above a horizontal line.

Fred Brakeman

List of Exhibits

Exhibit 1	FCC Form 500
Exhibit 2	FCC Form 500 Approval

Affidavit of Rohan Ranaraja

I, Rohan Ranaraja, swear:

1. That I am Executive Director, Government and Regulatory Affairs, of ATN International, Inc., the parent company of NTUA Wireless, LLC.
2. That in my capacity I am familiar with NTUA Wireless, LLC's compliance with the federal universal service program rules and requirements. Therefore, I have personal knowledge of the facts described in the foregoing extension request.
3. That I have read the foregoing extension request and avow that the information stated therein is true and correct to the best of my knowledge and belief.



Rohan Ranaraja
Executive Director, Government and Regulatory
Affairs
ATN International, Inc.
1001 Technology Drive, Suite 202
Little Rock, AR 72223

Subscribed and sworn to before me this 4 day of May, 2019.


Notary Public

EXHIBIT 1

 SAVE DRAFT

FCC Form 500 - Service Delivery Extension Request

Use the filters below to search and select FRNs to associate.

APACHE CO SCHOOL CONSORTIUM (BEN: 143139) - Apache County Consortium YR20- Lit Fiber/Special Construction - Form #171035372

General Information

Service Delivery Extension

Certification

Submitting Organization Details

APACHE CO SCHOOL CONSORTIUM
P.O. BOX 548, 75 WEST 1ST NORTH
SAINT JOHNS, AZ 85936
928-337-7610
amadrid@apachecountyschools.net

BEN: 143139
FCC Registration Number: 0013563770

Filters

FRN

Enter entire Funding Request Number

FRN Nickname

Enter FRN Nickname

Category of Service

--Select Filter by Application Category of Service--

SPIN

Enter entire SPIN Number

SPIN Name

Enter entire SPIN Name

ADD ALL (2) FRNS

CLEAR SEARCH FILTERS

SEARCH

<input type="checkbox"/>	FRN ↑	Application Number	Application Nickname	FRN Nickname	Category of Service	SPIN	SPIN Name
<input type="checkbox"/>	1799079327	171035372	ACSBC IA Lit Fiber Y20	Special Construct	Category 1	143035541	NTUA Wireless, LLC
<input type="checkbox"/>	1799079365	171035372	ACSBC IA Lit Fiber Y20	NTUA Broadband New	Category 1	143035541	NTUA Wireless, LLC

ADD (0) FRNS

Selected FRNs

<input type="checkbox"/>	FRN	Application Number	Application Nickname	FRN Nickname	Category of Service	SPIN	SPIN Name
<input type="checkbox"/>	1799079327	171035372	ACSBC IA Lit Fiber Y20	Special Construct	Category 1	143035541	NTUA Wireless, LLC

REMOVE (0) FRNS

Service Provider Questions

Was the service provider unable to complete delivery and installation for reasons beyond their control?

YES ☒ NO ☐

Was the service provider unwilling to complete delivery and installation after USAC withheld payment for more than 60 days on an invoice for those services?

YES ☐ NO ☒

Please provide an explanation of why you are requesting the more time to deliver non-recurring services. ?

Funding for this application was delayed. The Service Provider has also incurred a long delay in getting their building permits approved, as we are on Indian Reservation Land and federal forest service land; they are now in the middle of a harsh winter, further delaying construction. Hazardous smoke, forest fires and continued prescribed burns have also prevented the service provider to gain access repeatedly to project pathways. In addition, US forestry service has maintained blockage of many access roads. Please see the attached document, supporting this request.

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Upload supporting documentation ?




Document	Description	Uploaded On	Remove
<div><div></div><div>Arizona Forest Fires 2017-2018 PDF – 491.95 KB</div></div>	Arizona Forest Fire Information	2/1/2018 12:21 PM EST	
<div><div> Upload Document</div></div>			
<div><div><div>CANCEL</div><div>BACK</div></div></div>		<div><div>CONTINUE</div></div>	

EXHIBIT 2

BEN	BEN Name	Post-Commitment Request Type	Post-Commitment Request Number	Post-Commitment Request FPN	Post-Commitment Request Level	Post-Commitment Request FPN	Original FPN Funding Decision	Revised FPN Funding Decision	RFCOL Comments (FPN Level)	FCC Form 471	Service Type	Establishing FCC Form 470	SPN	Service Provider	Contact Number (or SPN)	Account Number	Service Start Date	Contract Expiration Date (Original)	Contract Award Date	Contract Date After Extension Entered	Months Of Service In Funding Year	Total Available Recurring Charges
143739	APACHE CO SCHOOL CONSORTIUM	FCC Form 500 - Service Delivery Extension Request	88919	1713074937	Approved		Funded	Funded	Your request is approved. The Second Earth Modernization Order must be completed in time for the associated fiber to be lit by June 30. If the request is approved, you will receive up to a one-year extension to complete special construction and the last day to submit the request is 10/26/19.	171035372	Data and/or Internet Access	170027295	143005541	NTUA Wireless, LLC	Altazoa #1	APACHE CO SCHOOL CONSORTIUM	01-Jul-2017	30-Jun-2019	07-May-2017		12	\$50.00